

# UNITING PRIVACY AND THE FIRST AMENDMENT IN THE 21ST CENTURY



Friday, May 9, 2003  
Preservation Park  
1233 Preservation Park Way  
Oakland, CA

No Constitutional values are more cherished than freedom of expression and the right to privacy. Yet too often privacy and the First Amendment have been set against one another, sometimes to the detriment of citizens and consumers. The "Uniting Privacy and the First Amendment in the 21<sup>st</sup> Century" Symposium will explore how best to safeguard these two essential rights. It is a meeting for advocates and academics, experts and interested persons, a conference for people who value both freedom of expression and the right to privacy. Information Sessions and interactive Working Groups will foster problem solving and future collaboration among attendees. Make sure to indicate on your registration form which Working Groups you'll attend.

Marc Rotenberg, Executive Director  
Electronic Privacy Information  
Center

David Greene, Executive Director  
First Amendment Project

Joanne McNabb, Chief  
Office of Privacy Protection  
California Department of  
Consumer Affairs

## Schedule for Friday, May 9

8:00 – 8:45 a.m.	Registration & Continental Breakfast
8:45 – 9:00 a.m.	Welcome/Introduction
9:00 – 9:50 a.m.	Privacy's Role in Promoting 1 <sup>st</sup> Amendment Rights - Information Session
10:00 – 11:30 a.m.	Privacy's Role in Promoting 1 <sup>st</sup> Amendment Rights - Working Groups
11:45 – 12:45 p.m.	Mutual Threats to Privacy and 1 <sup>st</sup> Amendment Rights - Information Session
12:45 – 2:00 p.m.	LUNCH (provided)
2:00 – 2:50 p.m.	Free Speech and Privacy in Conflict - Information Session
3:00 – 4:30 p.m.	Free Speech and Privacy in Conflict - Working Groups
4:30 – 5:30 p.m.	<b>Keynote Address by Jeffrey Rosen</b> , followed by Reception

Jeffrey Rosen's book, *The Unwanted Gaze: The Destruction of Privacy in America*, was described in the *New York Times* as "the definitive text on privacy perils in the digital age."

## **FRIDAY MORNING: PRIVACY'S ROLE IN PROMOTING FIRST AMENDMENT RIGHTS**

Freedom of expression and privacy are all too often cast as conflicting interests. By focusing on this conflict, however, one can overlook the ways in which privacy serves an important role in enhancing the exercise of First Amendment rights. In these sessions, leading advocates will examine some of the ways in which privacy and First Amendment rights have a powerful synergy.

### **General Session Panel**

Anonymous Advocacy on the Internet: Cindy Cohn, Legal Director, *Electronic Frontier Foundation*

Privacy and Freedom of Association: Ann Brick, Staff Attorney, *ACLU of Northern California*

Bookseller Patron Privacy: Neal Coonerty, *Bookshop Santa Cruz*, *American Booksellers Foundation for Free Expression*

Library Patron Privacy: Judith F. Krug, Director, *American Library Association Office of Intellectual Freedom*

### **Working Groups**

#### **1. Protecting Anonymous Online Advocates**

Facilitated by Cindy Cohn; Yan Ge and Emily Zarins, *Samuelson Law, Technology and Public Policy Clinic*. This Working Group will brainstorm ways to change the legal processes that are used to expose the identity of online advocates so that these processes are more protective of the rights of anonymous Internet speakers.

#### **2. Tools and Techniques for Protecting Privacy in Associations**

Facilitated by Ann Brick. This Working Group will share tools and techniques with a goal of developing a set of best practices for protecting the privacy of association memberships, supporters and internal deliberations.

#### **3. Legislative Solutions for Protecting Library and Bookstore Patron Records**

Facilitated by Neal Coonerty, Judith F. Krug, and Mary Minow, Policy Analyst, *California Association of Library Trustees and Commissioners*. This Working Group will consider current legislative proposals to strengthen library and bookseller patron privacy rights and will seek to build alliances to support the bills.

#### **4. Facial Challenges to Surveillance Laws**

Facilitated by Lee Tien, *Electronic Frontier Foundation*. This Working Group will seek to develop a jurisprudential method for bringing facial challenges to surveillance laws parallel to the way in which laws directly abridging traditional First Amendment rights may be challenged.

## **FRIDAY MORNING: MUTUAL THREATS TO PRIVACY AND THE FIRST AMENDMENT**

Predictive Surveillance: An Emerging Threat to Privacy and the First Amendment. This panel will explore the civil liberties implications of predictive surveillance technologies such as data mining, with the goal of providing activists with tools and strategies for protecting privacy and First Amendment rights.

Historical Overview: Ruth Rosen, *San Francisco Chronicle*

Technology: Peter Neumann, *SRI*

Constitutional Issues: TBD

Legislative Issues: David Sobel, *Electronic Privacy Information Center*

## **FRIDAY AFTERNOON: FREE SPEECH AND PRIVACY IN CONFLICT**

There are areas where the rights of free speech and privacy remain in conflict. We will examine four such areas and attempt to move towards establishing common ground.

### **General Session Panel**

Privacy and the Constitution: Daniel Solove, *Seton Hall School of Law*

Trafficking in Private Information: Chris Hoofnagle, *Electronic Privacy Information Center*

Investigative Use of Personal Information: Beth Givens, *Privacy Rights Clearinghouse*

Newsgathering and Privacy: TBD

### **Working Groups**

#### **1. Public Records and Privacy**

Panelists: Daniel Solove; Kim Alexander, *California Voter Foundation*; Terry Francke, *California Newspaper Publishers Association/First Amendment Coalition*; Dana Mitchell, Counsel, *California State Senate*. This Working Group will discuss how to resolve the tension between individual privacy and public access to government, with the goal of identifying legislative approaches.

#### **2. Marketing Private Information**

Panelists: Chris Hoofnagle; Jerry Flannigan, *Foundation for Taxpayer and Consumer Rights*; Webster Guillory, *Orange County Assessor*; Sonia Arrison, *Pacific Research Institute*. This group will debate the societal costs and benefits of the traffic in private information.

#### **3. Investigative Uses of Personal Information**

Panelists: Francie Koehler, *California Association of Licensed Investigators*; Les Rosen, *Employment Screening Resources*; James Cawood, *Association of Threat Assessment Professionals*; Beth Givens. This group will debate the pros and cons of the present legal and regulatory scheme for controlling the use of personal information for investigative purposes.

#### **4. Practical Lessons for Working Journalists on the New Rules on Privacy**

Facilitators: James Wheaton (moderator), *First Amendment Project*; Cynthia Gorney, law and ethics professor at U.C. Berkley School of Journalism and a former reporter with the *Washington Post*; additional facilitators TBD. This panel will be a practical skills session for working journalists on the changing rules of privacy as they affect newsgathering.

**This Symposium is funded in part by a grant from the Privacy Rights Fund of the Rose Foundation for Communities and the Environment.**

### **OUR PRIVACY POLICY**

Any personal information collected from symposium registrants will be used only for the purpose of administering the symposium.

## Uniting Privacy and the First Amendment REGISTRATION FORM

\_\_\_\_\_  
Last Name

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First Name

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Firm / Organization

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Address

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State

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Phone Number

For out-of-town attendees with special financial need, a small travel scholarship fund is available. Please include a brief letter explaining your need when you send your registration form. Be sure to include your phone number.

Please check all that apply below:

- ☐ Regular Fee \$95  
☐ Student/Non-Profit/Journalist Fee \$25

Please indicate the **Working Groups** you plan to attend, 1,2, 3 or 4:

10 – 11:30 a.m. \_\_\_\_\_

3 – 4:30 p.m. \_\_\_\_\_

The registration fee includes a free copy of Marc Rotenberg's *Privacy Law Sourcebook 2002: United States Law, International Law, and Recent Developments* (\$40 value).

### SEND THIS FORM

with your check payable to First Amendment Project to:  
First Amendment Project, Attn: Sandra Lupien  
1736 Franklin Street, 9<sup>th</sup> Floor  
Oakland, CA 94612 (510) 208-7744

### HOTEL INFORMATION

We have reserved a room block for attendees at the Oakland Marriott City Center, 1001 Broadway, Oakland, California. To make your reservation, please call 1-800-991-7249 and request the First Amendment Project Block. The single/double rate per night is \$109.00.

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